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RICHARD H. BIERING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

William C. Wilka (CA Bar No. 79667)  
Dudnick, Detwiler, Rivin & Stikker, LLP  
351 California Street, 15<sup>th</sup> Floor  
San Francisco, California 94104  
(415) 982-1400

Louis W. Diess, III  
ldiess@mccarronlaw.com  
McCarron & Diess  
4900 Massachusetts Avenue, N.W., Suite 310  
Washington, D.C. 20016  
(202) 364-0400

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LEE-RAY TARANTINO CO., INC., d/b/a  
GOLDEN STATE PRODUCE CO.  
P.O. Box 2408  
Golden State Produce Terminal  
131 Terminal Ct.  
South San Francisco, California 94083  
(650) 873-9432

Plaintiff

v.

THEODORAS KOLIATISIS, d/b/a/  
4<sup>TH</sup> & GEARY FARMERS MARKET  
3931 Geary Boulevard  
San Francisco, California 94118  
(415) 831-1067

Defendant

C 07 5705

Civil Action No: \_\_\_\_\_

**COMPLAINT**  
**(To Enforce Payment**  
**From Produce Trust)**

**CW**

Lee-Ray Tarantino Co., Inc., d/b/a Golden State Produce Co. ("plaintiff"), for its  
complaint against defendant alleges:

JURISDICTION AND VENUE

1  
2 1. Jurisdiction is based on Section 5(c)(5) of the Perishable Agricultural  
3 Commodities Act, 7 U.S.C. §499e(c)(5) (hereafter "the PACA"), and 28 U.S.C. §1331.

4  
5 2. Venue in this District is based on 28 U.S.C. §1391 in that (a) plaintiff's claim  
6 arose in this District and (b) defendant's principal place of business is in this District.

7 PARTIES

8 3. Plaintiff, a California corporation with its principal place of business in South  
9 San Francisco, California, is engaged in the business of buying and selling wholesale  
10 quantities of perishable agricultural commodities (hereafter "produce") in interstate  
11 commerce and was at all times pertinent herein, a dealer subject to and licensed under the  
12 provisions of the PACA as a dealer.  
13

14 4. a. Defendant, Theodoras Koliatsis, an individual doing business as 4th  
15 & Geary Farmers Market ("4th & Geary"), in San Francisco, California, is engaged in the  
16 business of buying wholesale quantities of produce in interstate commerce and was at all  
17 times pertinent herein, a dealer subject to license under the provisions of the PACA as a  
18 dealer.  
19

20 GENERAL ALLEGATIONS

21 5. This action is brought to enforce the trust provisions of P.L. 98-273, the 1984  
22 amendment to Section 5(c) of the PACA, 7 U.S.C. §499e(c).  
23

24 6. Between July 20, 2007 and November 2, 2007, plaintiff sold and delivered to  
25 defendant, in interstate commerce, wholesale amounts of produce worth \$328,344.36,  
26 which remains unpaid.  
27

28 7. Defendant accepted the produce from plaintiff.

1           8.     At the time of receipt of the produce, plaintiff became a beneficiary in a  
2 statutory trust designed to assure payment to produce suppliers. The trust consists of all  
3 produce or produce-related assets, including all funds commingled with funds from other  
4 sources and all assets procured by such funds, in the possession or control of defendant  
5 since the creation of the trust.  
6

7           9.     Plaintiff preserved its interest in the PACA trust in the amount of  
8 \$328,344.36 by sending invoices to defendant containing the language required by 7  
9 U.S.C. §499e(c)(4), and remains a beneficiary until full payment is made for the produce.  
10

11           10.    Defendant has not disputed the debt in any way and has repeatedly  
12 promised to pay, but has not done so in direct violation of the trust provisions of the PACA.  
13 In addition, defendant has tendered four checks to plaintiff in the aggregate amount of  
14 \$76,000.00 in partial payment for the produce supplied by plaintiff, all of which have been  
15 returned by the bank for insufficient funds.  
16

17           11.    Defendant's failure and refusal to pay plaintiff and the passing of four (4)  
18 insufficient funds checks demonstrate that defendant is failing to maintain sufficient assets  
19 in the statutory trust to pay plaintiff and is dissipating trust assets.  
20

21                               Count 1

22                               (Failure to Pay Trust Funds)

23           12.    Plaintiff incorporates each and every allegation set forth in paragraphs 1 to  
24 11 above as if fully set forth herein.

25           13.    The failure of defendant to make payment to plaintiff of trust funds in the  
26 amount of \$328,344.36 from the statutory trust is a violation of PACA and PACA  
27 regulations, and is unlawful.  
28

1 WHEREFORE, plaintiff requests an order enforcing payment from the trust by  
2 requiring immediate payment of \$328,344.36 to plaintiff.

3 Count 2

4 (Failure to Pay For Goods Sold)

5  
6 14. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to  
7 13 above as if fully set forth herein.

8 15. Defendant failed and refused to pay plaintiff \$328,344.36 owed to plaintiff for  
9 produce and other items received by defendant from plaintiff.

10  
11 WHEREFORE, plaintiff requests judgment in the amount of \$328,344.36 against  
12 the defendant.

13 Count 3

14 (Unlawful Dissipation of Trust Assets by  
15 a Corporate Official – Theodoras Koliatsis)

16 16. Plaintiff incorporates each and every allegation set forth in paragraph 1 to 15  
17 above as if fully set forth herein.

18 17. Defendant, Theodoras Koliatsis, was in a position of control over the PACA  
19 trust assets belonging to plaintiff.

20  
21 18. Defendant, Theodoras Koliatsis, failed to fulfill his statutory duties to  
22 preserve PACA trust assets and pay plaintiff for the produce supplied.

23 19. Defendant, Theodoras Koliatsis' failure to maintain PACA trust assets and  
24 pay plaintiff for the produce it supplied was an unlawful dissipation of trust assets.

25  
26 20. As a result of said unlawful dissipation of trust assets, plaintiff has been  
27 deprived of its rights as a beneficiary in the produce trust and has been denied payment  
28 for the produce it supplied.

1 WHEREFORE, plaintiff requests judgment against defendant under the trust  
2 provisions of PACA.

3  
4 Count 4

5 (Interest and Attorney's Fees)

6 21. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to  
7 20 above as if fully set forth herein.

8 22. Defendant's failed to make full payment promptly of \$328,344.36 and  
9 plaintiff has lost the use of said money.

10  
11 23. As a result of defendant's failure to make full payment promptly of  
12 \$328,344.36, plaintiff has been required to pay attorney's fees and costs in order to bring  
13 this action to require defendant to comply with their statutory duties.

14 24. PACA and the invoices of plaintiff entitle plaintiff to recover prejudgment  
15 interest at the rate of 18% per annum and attorney's fees incurred to collect any balance  
16 due from defendant.

17  
18 WHEREFORE, plaintiff requests judgment against each of the defendant, jointly  
19 and severally, for prejudgment interest, costs and attorneys fees.

20 Dated this 9<sup>th</sup> day of November, 2007

21  
22 DUDNICK, DETWILER, RIVIN & STIKKER, LLP

23  
24 By: William C. Wilka  
25 William C. Wilka (CA Bar No. 79667)  
26 351 California Street, 15<sup>th</sup> Floor  
27 San Francisco, California 94104  
28 (415) 982-1400

And

McCARRON & DIESS  
Louis W. Diess, III  
4900 Massachusetts Ave., N.W.  
Washington, DC 20016  
(202) 364-0400  
Attorneys for Plaintiff